**A** **BILL**

TO AMEND SECTION 44‑7‑110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SHORT TITLE OF ARTICLE 3, CHAPTER 7, TITLE 44 PERTAINING TO CERTIFICATES OF NEED, SECTION 44‑7‑120, RELATING TO THE PURPOSE OF THIS ARTICLE, SECTION 44‑7‑130, AS AMENDED, RELATING TO DEFINITIONS IN THIS ARTICLE, SECTION 44‑7‑140, RELATING TO DUTIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ADMINISTER THE CERTIFICATE OF NEED PROGRAM AND HEALTH FACILITY LICENSURE, SECTION 44‑7‑150, AS AMENDED, RELATING TO CERTAIN OTHER DUTIES OF THE DEPARTMENT, AND SECTION 44‑7‑170, AS AMENDED, RELATING TO THE APPLICABILITY OF THE ARTICLE TO CERTAIN FACILITIES, ALL SO AS TO DELETE PROVISIONS RELATING TO THE CERTIFICATE OF NEED PROGRAM, THEREBY ABOLISHING THE PROGRAM; AND TO REPEAL SECTIONS 44‑7‑160, 44‑7‑180, 44‑7‑190, 44‑7‑200, 44‑7‑210, 44‑7‑220, 44‑7‑230, AND 44‑7‑240 ALL RELATING TO THE CERTIFICATE OF NEED PROGRAM AND RELATED POWERS AND PROCEDURES OF THE DEPARTMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑7‑110 of the 1976 Code is amended to read:

“Section 44‑7‑110. This article may be cited as the ‘~~State Certification of Need and~~ Health Facility Licensure Act’.”

SECTION 2. Section 44‑7‑120 of the 1976 Code is amended to read:

“Section 44‑7‑120. The purpose of this article is to ~~promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public needs, and~~ ensure that high quality services are provided in health facilities in this State. To achieve ~~these purposes~~ this purpose, this article requires~~:~~

~~(1)~~ ~~the issuance of a Certificate of Need before undertaking a project prescribed by this article;~~

~~(2)~~ ~~adoption of procedures and criteria for submittal of an application and appropriate review before issuance of a Certificate of Need;~~

~~(3)~~ ~~preparation and publication of a State Health Plan;~~

~~(4)~~ the licensure of facilities rendering medical, nursing, and other health care.”

SECTION 3. Section 44‑7‑130 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44‑7‑130. As used in this article:

(1) ~~‘Affected person’ means the applicant, a person residing within the geographic area served or to be served by the applicant, persons located in the health service area in which the project is to be located and who provide similar services to the proposed project, persons who before receipt by the department of the proposal being reviewed have formally indicated an intention to provide similar services in the future, persons who pay for health services in the health service area in which the project is to be located and who have notified the department of their interest in Certificate of Need applications, the State Consumer Advocate, and the State Ombudsman. Persons from another state who would otherwise be considered “affected persons” are not included unless that state provides for similar involvement of persons from South Carolina in its certificate of need process.~~ Reserved.

(2) ‘Ambulatory surgical facility’ means a facility organized and administered for the purpose of performing surgical procedures for which patients are scheduled to arrive, receive surgery, and be discharged on the same day. The owner or operator makes the facility available to other providers who comprise an organized professional staff.

(3) ‘Board’ means the State Board of Health and Environmental Control.

(4) Reserved.

(5) ~~‘Competing applicants’ means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.~~ Reserved.

(6) ‘Community residential care facility’ means a facility which offers room and board and provides a degree of personal assistance for two or more persons eighteen years old or older.

(7) ‘~~Day‑care~~ Daycare facility for adults’ means a facility for adults eighteen years or older which offers in a group setting a program of individual and group activities and therapies. The program is directed toward providing community‑based care for those in need of a supportive setting for less than twenty‑four hours a day, thereby preventing unnecessary institutionalization, and shall provide a minimum of four and a maximum of fourteen hours of operation a day.

(8) ‘Department’ means the Department of Health and Environmental Control.

(9) ~~‘The federal act’ means Title VI of the United States Public Health Service Act (the Hill‑Burton Construction Program); Title XVI of the United States Public Health Service Act (National Health Planning and Resources Development Act of 1974‑‑Public Law 93‑641); grants for all center and facility construction under Public Law 91‑211 (community mental health centers’ amendments to Title II, Public Law 88‑164, Community Mental Health Centers Act); grants for all facility construction under Public Law 91‑517 (developmental disabilities services and facilities construction amendments of 1970 to Part C, Title I, grants for construction of facilities for the mentally retarded‑‑Public Law 88‑164); and other federal programs as may exist or be enacted which provide for the construction of hospitals or related health facilities.~~ Reserved.

(10) ‘Health care facility’ means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, and intermediate care facilities for ~~the mentally retarded, and any other facility for which Certificate of Need review is required by federal law~~ persons with intellectual disabilities.

(11) ‘Health service’ means clinically related, diagnostic, treatment, or rehabilitative services and includes alcohol, drug abuse, and mental health services for which specific standards or criteria are prescribed ~~in the State Health Plan~~.

(12) ‘Hospital’ means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

(13) ‘Nursing home’ means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled nursing care for persons who are not in need of hospital care.

(14) ‘Facility for chemically dependent or addicted persons’ means a facility organized to provide outpatient or residential services to chemically dependent or addicted persons and their families based on an individual treatment plan including diagnostic treatment, individual and group counseling, family therapy, vocational and educational development counseling, and referral services.

(15) ‘Person’ means an individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a health care facility, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.

(16) ‘Residential treatment facility for children and adolescents’ means a facility operated for the assessment, diagnosis, treatment, and care of two or more “children and adolescents in need of mental health treatment” which provides:

(a) a special education program with a minimum program defined by the South Carolina Department of Education;

(b) recreational facilities with an organized youth development program; and

(c) residential treatment for a child or adolescent in need of mental health treatment.

(17) ‘Solely for research’ means a service, procedure, or equipment which has not been approved by the Food and Drug Administration (FDA) but which is currently undergoing review by the FDA as an investigational device. FDA research protocol and any applicable Investigational Device Exemption (IDE) policies and regulations must be followed by a facility proposing a project ‘solely for research’.

(18) ‘Children and adolescents in need of mental health treatment’ in a residential treatment facility means a child or adolescent under age eighteen or a child or adolescent under age twenty‑one who is a client of, committed to the custody of, or in the legal custody of an agency of the State of South Carolina who manifests a substantial disorder of cognitive or emotional process, which lessens or impairs to a marked degree that child’s or adolescent’s capacity either to develop or to exercise age‑appropriate or age‑adequate behavior. The behavior includes, but is not limited to, marked disorders of mood or thought processes, severe difficulties with self‑control and judgment including behavior dangerous to self or others, and serious disturbances in the ability to care for and relate to others.

(19) ‘Intermediate care facility for the mentally retarded’ means a facility that serves four or more mentally retarded persons or persons with related conditions and provides health or rehabilitative services on a regular basis to individuals whose mental and physical conditions require services including room, board, and active treatment for their mental retardation or related conditions.

(20) ‘Freestanding or mobile technology’ means medical equipment owned or operated by a person other than a health care facility for which the total cost is in excess of that prescribed by regulation ~~and for which specific standards or criteria are prescribed in the State Health Plan~~.

(21) ~~‘Like equipment with similar capabilities’ means medical equipment in which functional and technological capabilities are identical to the equipment to be replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service.~~ Reserved.

(22) ‘Facilities wherein abortions are performed’ means a facility, other than a hospital, in which any second trimester or five or more first trimester abortions are performed in a month.

(23) ‘Radiation therapy facility’ means a person or a health care facility which provides or seeks to provide mega‑voltage therapeutic services to patients through the use of high energy radiation.

(24) ‘Birthing center’ means a facility or other place where human births are planned to occur. This does not include the usual residence of the mother or any facility that is licensed as a hospital or the private practice of a physician who attends the birth.

(25) ‘Freestanding emergency service’ also referred to as an off‑campus emergency service, means an extension of an existing hospital emergency department that is an off‑campus emergency service and that is intended to provide comprehensive emergency service. The hospital shall have a valid license and be in operation to support the off‑campus emergency service. A service that does not provide twenty‑four hour, seven day per week operation or that is not capable of providing basic services as defined for hospital emergency departments must not be classified as a freestanding emergency service and must not advertise or display or exhibit any signs or symbols that would identify the service as a freestanding emergency service.”

SECTION 4. Section 44‑7‑140 of the 1976 Code is amended to read:

“Section 44‑7‑140. The department is designated the sole state agency for control and administration of ~~the granting of Certificates of Need and~~ licensure of health facilities and other activities necessary to be carried out under this article.”

SECTION 5. Section 44‑7‑150 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44‑7‑150. In carrying out the purposes of this article, the department shall:

(1) require reports and make inspections and investigations as considered necessary;

(2) to the extent that is necessary to effectuate the purposes of this article, enter into agreements with other departments, commissions, agencies, and institutions, public or private;

(3) adopt in accordance with Article I of the Administrative Procedures Act substantive and procedural regulations considered necessary by the department and approved by the board to carry out the department’s licensure ~~and Certificate of Need~~ duties under this article~~, including regulations to deal with competing applications~~ and;

(4) accept on behalf of the State and deposit with the State Treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purpose of this article and expend it for that purpose~~;~~

~~(5)~~ ~~The department may charge and collect fees to cover the cost of operating the Certificate of Need program, including application fees, filing fees, issuance fees, and nonapplicability/exemption determination fees. The department shall develop regulations which set fees as authorized by this article. The level of these fees must be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services in the Certificate of Need program. All fees and procedures for collecting fees must be adopted pursuant to procedures set forth in the Administrative Procedures Act. Any fee collected pursuant to this section in excess of seven hundred fifty thousand dollars must be retained by the department and designated for the administrative costs of the Certificate of Need program. The first seven hundred fifty thousand dollars collected pursuant to this section must be deposited into the general fund of the State. Until fees are promulgated through regulation, all fees established as of January 1, 2009, remain in effect~~.”

SECTION 6. Section 44‑7‑170 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44‑7‑170. (A) The following are exempt from ~~Certificate of Need review~~ the provisions of this article:

(1) the acquisition by a person of medical equipment to be used solely for research, the offering of an institutional health service by a person solely for research, or the obligation of a capital expenditure by a person to be made solely for research if it does not:

(a) affect the charges imposed by the person for the provision of medical or other patient care services other than the services that are included in the research;

(b) change the bed capacity of a health care facility; or

(c) substantially change the medical or other patient care services provided by the person.

(B) A written description of the proposed research project must be submitted to the department in order for the department to determine if these conditions are met. ~~A Certificate of Need is required in order to continue use of the equipment or service after the equipment or service is no longer being used solely for research;~~

~~(2)~~ ~~the offices of a licensed private practitioner whether for individual or group practice except as provided for in Section 44‑7‑160(1) and (6);~~

~~(3)~~ ~~the replacement of like equipment for which a Certificate of Need has been issued which does not constitute a material change in service or a new service.~~

~~(B)~~ ~~This article does not apply to:~~

~~(1)~~ ~~an expenditure by or on behalf of a health care facility for nonmedical projects for services such as refinancing existing debt, parking garages, laundries, roof replacements, computer systems, telephone systems, heating and air conditioning systems, upgrading facilities which do not involve additional square feet or additional health services, replacement of like equipment with similar capabilities, or similar projects as described in regulations;~~

~~(2)~~ ~~facilities owned and operated by the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs, except an addition of one or more beds to the total number of beds of the departments’ health care facilities existing on July 1, 1988;~~

~~(3)~~ ~~educational and penal institutions maintaining infirmaries for the exclusive use of student bodies and inmate populations;~~

~~(4)~~ ~~any federal health care facility sponsored and operated by this State;~~

~~(5)~~ ~~community‑based housing designed to promote independent living for persons with mental or physical disabilities. This does not include a facility defined in this article as a “health care facility”;~~

~~(6)~~ ~~kidney disease treatment centers including, but not limited to, free standing hemodialysis centers and renal dialysis centers;~~

~~(7)~~ ~~health care facilities owned and operated by the federal government.~~

~~(C)~~ ~~Before undertaking a project enumerated in subsection (A), a person shall obtain a written exemption from the department as may be more fully described in regulation.~~”

SECTION 7. Sections 44‑7‑160, 44‑7‑180, 44‑7‑190, 44‑7‑200, 44‑7‑210, 44‑7‑220, 44‑7‑230, and 44‑7‑240 of the 1976 Code are repealed.

SECTION 8. This act takes effect July 1, 2012.

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